

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSIAH WILLIAMS,

Defendant.

No. CR 05-1014-LRR

FINAL JURY INSTRUCTIONS

Ladies and Gentlemen of the Jury:

The instructions I gave you at the beginning of the trial and during the trial remain in effect. I will now give you some additional instructions.

You must, of course, continue to follow the instructions I gave you earlier, as well as those I give you now. You must not single out some instructions and ignore others, because all are important. This is true even though some of those I gave you at the beginning of and during trial are not repeated here.

The instructions I am about to give you now are in writing and will be available to you in the jury room. I emphasize, however, that this does not mean they are more important than my earlier instructions. Again, all instructions, whenever given and whether in writing or not, must be followed.

INSTRUCTION NUMBER _____

In considering these instructions, attach no importance or significance whatsoever to the order in which they are given.

INSTRUCTION NUMBER _____

Neither in these instructions nor in any ruling, action, or remark that I have made during this trial have I intended to give any opinion or suggestion as to what the facts are or what your verdict should be.

INSTRUCTION NUMBER _____

It is your duty to find from the evidence what the facts are. You will then apply the law, as I give it to you, to those facts. You must follow my instructions on the law, even if you thought the law was different or should be different.

Do not allow sympathy or prejudice to influence you. The law demands of you a just verdict, unaffected by anything except the evidence, your common sense, and the law as I give it to you.

INSTRUCTION NUMBER _____

I have mentioned the word “evidence.” The “evidence” in this case consists of the following: the testimony of the witnesses and the documents and other things received as exhibits.

You may use reason and common sense to draw deductions or conclusions from facts which have been established by the evidence in the case.

Certain things are not evidence. I shall list those things again for you now:

1. Statements, arguments, questions, and comments by the lawyers are not evidence.
2. Objections are not evidence. The parties have a right to object when they believe something is improper. You should not be influenced by the objection. If I sustained an objection to a question, you must ignore the question and must not try to guess what the answer might have been.
3. Testimony that I struck from the record, or told you to disregard, is not evidence and must not be considered.
4. Anything you saw or heard about this case outside the courtroom is not evidence.

INSTRUCTION NUMBER _____

There are two types of evidence from which a jury may properly find the truth as to the facts of a case: direct evidence and circumstantial evidence. Direct evidence is the evidence of the witness to a fact or facts of which they have knowledge by means of their senses. The other is circumstantial evidence—the proof of a chain of circumstances pointing to the existence or nonexistence of certain facts. The law makes no distinction between direct and circumstantial evidence. You should give all evidence the weight and value you believe it is entitled to receive.

INSTRUCTION NUMBER _____

The government and the defendant have stipulated – that is, they have agreed – that certain facts are as counsel have stated. You must, therefore, treat those facts as having been proved.

INSTRUCTION NUMBER _____

The jurors are the sole judges of the weight and credibility of the testimony and the value to be given to each witness who has testified in this case. In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it, or none of it.

In deciding what testimony to believe, consider the witness's intelligence, the opportunity the witness had to have seen or heard the things testified about, the witness's memory, any motives that witness may have for testifying a certain way, the manner of the witness while testifying, whether that witness said something different at an earlier time, the general reasonableness of the testimony, and the extent to which the testimony is consistent with any evidence that you believe.

In deciding whether or not to believe a witness, keep in mind that people sometimes hear or see things differently and sometimes forget things. You need to consider, therefore, whether a contradiction is an innocent misrecollection or lapse of memory or an intentional falsehood, and that may depend on whether it has to do with an important fact or only a small detail.

INSTRUCTION NUMBER _____

You have heard testimony from persons described as experts. A person who, by knowledge, skill, training, education or experience, has become an expert in some field may state his opinions on matters in that field and may also state the reasons for his opinion.

Expert testimony should be considered just like any other testimony. You may accept or reject it, and give it as much weight as you think it deserves, considering the witness's education and experience, the soundness of the reasons given for the opinion, the acceptability of the methods used, and all the other evidence in the case.

INSTRUCTION NUMBER ____

You have heard testimony that the defendant made statements to law enforcement officers in this case. It is for you to decide: (1) whether the defendant made the statements and (2) if so, how much weight you should give to them. In making these two decisions you should consider all of the evidence, including the circumstances under which the statements may have been made.

INSTRUCTION NUMBER ____

Exhibits have been admitted into evidence and are to be considered along with all of the other evidence to assist you in reaching your verdict. You are not to tamper with the exhibits or their contents, and each exhibit should be returned into open court, along with your verdict, in the same condition as it was received by you.

INSTRUCTION NUMBER _____

The Indictment in this case charges the defendant with one offense.

Under Count 1, the Indictment charges the defendant with distributing and aiding and abetting the distribution of approximately 18.99 grams of a mixture or substance containing a detectable amount of “crack cocaine,” a Schedule II controlled substance, within 1,000 feet of the real property comprising a school, that is St. Mary’s/St. Patrick’s West Grade School.

The defendant has pleaded not guilty to this charge.

As I told you at the beginning of trial, an indictment is simply an accusation. It is not evidence of anything. To the contrary, the defendant is presumed to be innocent. Thus the defendant, even though charged, begins the trial with no evidence against him. The presumption of innocence alone is sufficient to find the defendant not guilty and can be overcome only if the government proves, beyond a reasonable doubt, each essential element of the crime charged.

INSTRUCTION NUMBER _____

Count 1 of the Indictment charges that on or about October 3, 2003, in the Northern District of Iowa, the defendant did knowingly and intentionally distribute and aid and abet the distribution of approximately 18.99 grams of a mixture or substance containing a detectable amount of cocaine base, a Schedule II controlled substance. The defendant may be found guilty of Count 1 under one of the following two alternatives: (1) committing the offense of distributing “crack cocaine”; or (2) committing the offense of aiding and abetting the distribution of “crack cocaine.”

First Alternative: Distribution of “Crack Cocaine”

The crime of distribution of “crack cocaine,” as charged in Count 1 of the indictment, has three essential elements, which are:

- One,* on or about October 3, 2003, the defendant intentionally transferred “crack cocaine”;
- Two,* at the time of the transfer, the defendant knew that it was “crack cocaine”; and
- Three,* the offense involved 5 grams or more but less than 50 grams of “crack cocaine.”

If you unanimously find all of these essential elements have been proved beyond a reasonable doubt, then you must find the defendant guilty of Count 1 under this “distribution of ‘crack cocaine’” alternative; otherwise you must find the defendant not guilty under this alternative.

(CONTINUED)

INSTRUCTION NUMBER ____ (Cont'd)

***Second Alternative: Aiding and Abetting the Distribution
of "Crack Cocaine"***

A person may be found guilty of distribution of "crack cocaine" even if he personally did not do every act constituting the offense charged, if he aided and abetted the commission of distributing "crack cocaine."

In order to have aided and abetted the commission of distributing "crack cocaine," a person must:

- One,* have known the crime of distribution of "crack cocaine" was being committed or going to be committed;
- Two,* have knowingly acted in some way for the purpose of causing, encouraging or aiding the crime of distribution of "crack cocaine";
- Three,* have intended that the crime of distribution of "crack cocaine" be committed; and
- Four,* the offense involved 5 grams or more but less than 50 grams of "crack cocaine."

For you to find the defendant guilty of Count 1 under this "aiding and abetting distribution of 'crack cocaine' alternative, you must unanimously find the government has proved beyond a reasonable doubt that all the essential elements of distributing "crack cocaine" were committed by some person or persons and that the defendant aided and abetted the commission of that crime. Otherwise you must find the defendant not guilty under this alternative.

(CONTINUED)

INSTRUCTION NUMBER _____ (Cont'd)

You should understand that merely being present at the scene of an event, or merely acting in the same way as others or merely associating with others, does not prove that a person has become an aider and abettor. A person who has no knowledge that a crime is being committed or about to be committed, but who happens to act in a way which advances some offenses, does not thereby become an aider and abettor.

INSTRUCTION NUMBER _____

You are instructed as a matter of law that “crack cocaine” is a Schedule II controlled substance. During this trial, you have heard the terms “crack cocaine” and “a mixture or substance containing a detectable amount of cocaine base” referred to interchangeably. You are instructed that “crack cocaine” and “a mixture or substance containing a detectable amount of cocaine base” refer to the same substance. You must ascertain whether or not the substance in question as to Count 1 was “crack cocaine.” In so doing, you may consider all the evidence in the case which may aid in the determination of that issue.

In determining whether the defendant is guilty of the offense charged under Count 1, the government is not required to prove that the amount or quantity of the “crack cocaine” was as charged in the Indictment. The government need only prove beyond a reasonable doubt that there was 5 grams or more but less than 50 grams of “crack cocaine” involved.

For your information, one gram equals 1,000 milligrams, one ounce equals 28.35 grams, one pound equals 453.6 grams and one kilogram equals 1,000 grams.

INSTRUCTION NUMBER _____

You must also determine whether the government has proven beyond a reasonable doubt that the location at which the distribution of the controlled substance took place was within 1,000 feet of the real property of a school. The 1,000 foot zone can be measured in a straight line from the school irrespective of actual pedestrian travel routes. The government does not have to prove that the defendant agreed, knew or intended that the offense would take place within 1,000 feet of the school.

INSTRUCTION NUMBER _____

The offense charged in Count 1 involves the distribution of “crack cocaine.” The following definition of the term “distribute” applies in these instructions:

The term “distribute” means to deliver a controlled substance to the possession of another person. The term “deliver” means the actual or attempted transfer of a controlled substance to the possession of another person. No consideration for the delivery need exist, and it is not necessary that money or anything of value change hands. The law is directed at the act of “distribution” of a controlled substance and does not concern itself with any need for a “sale” to occur.

INSTRUCTION NUMBER _____

Intent may be proven by circumstantial evidence. It rarely can be established by other means. While witnesses may see or hear and thus be able to give direct evidence of what a person does or fails to do, there can be no eyewitness account of the state of mind with which the acts were done or omitted. But what a defendant does or fails to do may indicate intent or lack of intent to commit an offense.

You may consider it reasonable to draw the inference and find that a person intends the natural and probable consequences of acts knowingly done, but you are not required to do so. As I have said, it is entirely up to you to decide what facts to find from the evidence.

INSTRUCTION NUMBER _____

A reasonable doubt is a doubt based upon reason and common sense, and not the mere possibility of innocence. A reasonable doubt is the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt, therefore, must be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it. However, proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

INSTRUCTION NUMBER _____

An act is done “knowingly” if the defendant realized what he was doing and did not act through ignorance, mistake or accident. The government is not required to prove that the defendant knew that his acts or omissions were unlawful. You may consider the evidence of the defendant’s acts and words, along with all other evidence, in deciding whether the defendant acted knowingly.

INSTRUCTION NUMBER _____

You will note the Indictment charges that the offense was committed “on or about” certain dates. The government need not prove with certainty the exact date or the exact time period of an offense charged. It is sufficient if the evidence established that an offense occurred within a reasonable time of the date or period of time alleged in the Indictment.

INSTRUCTION NUMBER _____

Throughout the trial, you have been permitted to take notes. Your notes should be used only as memory aids, and you should not give your notes precedence over your independent recollection of the evidence.

In any conflict between your notes, a fellow juror's notes, and your memory, your memory must prevail. Remember that notes sometimes contain the mental impressions of the note taker and can be used only to help you recollect what the testimony was. At the conclusion of your deliberations, your notes should be left in the jury room for destruction.

INSTRUCTION NUMBER _____

In conducting your deliberations and returning your verdict, there are certain rules you must follow. I shall list those rules for you now.

First, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you here in court.

Second, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach an agreement if you can do so without violence to individual judgment, because a verdict—whether guilty or not guilty—must be unanimous.

Each of you must make your own conscientious decision, but only after you have considered all the evidence, discussed it fully with your fellow jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your opinions if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right, or simply to reach a verdict.

Third, if the defendant is found guilty, the sentence to be imposed is my responsibility. You may not consider punishment in any way in deciding whether the government has proved its case beyond a reasonable doubt.

(CONTINUED)

INSTRUCTION NUMBER _____ (Cont'd)

Fourth, if you need to communicate with me during your deliberations, you may send a note to me through the marshal or court security officer, signed by one or more jurors. I will respond as soon as possible either in writing or orally in open court. Remember that you should not tell anyone—including me—how your votes stand numerically.

Finally, your verdict must be based solely on the evidence and on the law which I have given to you in my instructions. Each verdict, whether guilty or not guilty, must be unanimous. Nothing I have said or done is intended to suggest what your verdict should be—that is entirely for you to decide.

INSTRUCTION NUMBER _____

Attached to these instructions you will find one Verdict Form. This Verdict Form is simply the written notice of the decision that you reach in this case. The answer to this Verdict Form must be the unanimous decision of the jury.

You will take the Verdict Form to the jury room, and when you have completed your deliberations and each of you has agreed on an answer to the Verdict Form, your foreperson will fill out the Form, sign and date it, and advise the marshal or court security officer that you are ready to return to the courtroom.

Finally, members of the jury, take this case and give it your most careful consideration, and then without fear or favor, prejudice or bias of any kind, return such verdict as accord with the evidence and these instructions.

DATE

**LINDA R. READE
JUDGE, U. S. DISTRICT COURT**

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSIAH WILLIAMS,

Defendant.

No. CR 05-1014-LRR

VERDICT FORM COUNT 1

We, the Jury, find the defendant, Josiah Williams, _____ of the
Not Guilty / Guilty
crime of distributing and aiding and abetting the distribution of 5 grams or more but less
than 50 grams of a mixture or substance containing a detectable amount of cocaine base
(commonly called "crack cocaine"), a Schedule II controlled substance, on or about
October 3, 2003, as charged in Count 1 of the Indictment.

FOREPERSON

DATE

Note: If you unanimously find the defendant guilty of the above crime, have your foreperson write "guilty" in the above blank space, sign and date this Verdict Form and answer Question 1 in this Verdict Form.

If you unanimously find the defendant not guilty of the above charge, have your foreperson write "not guilty" in the above blank space, and sign and date this Verdict Form.

QUESTION 1: In the event that you unanimously find, beyond a reasonable doubt, the defendant guilty of Count 1, do you unanimously find beyond a reasonable doubt that the distribution of the “crack cocaine” took place within 1,000 feet of the real property comprising a school, that is St. Mary’s/St. Patrick’s West Grade School?

_____ No

_____ Yes

FOREPERSON

DATE